

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

TRACK THREE

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**PHARMACY DEFENDANTS' MOTION TO COMPEL PLAINTIFFS  
TO COMPLY WITH COURT ORDER**

Plaintiffs have failed to comply with the Court's Order Regarding Abatement Proceeding (Doc. 4220). The Order required plaintiffs, "for each element listed in their abatement plan," to provide "discovery showing how much money Lake County and Trumbull County each expended on those elements in the two most recent years for which such data is available." Plaintiffs did not produce the required discovery. Instead, they provided only a letter from counsel that does not contain the information that the Order required.<sup>1</sup>

Far from providing actual dollar amounts expended on each "element" of their purported abatement plan (*e.g.*, drug take-back collection programs, treatment for opioid use disorder, Hepatitis C and HIV screening / treatment, naloxone and related training), counsel's letter purports to provide total expenditures for certain county departments in their entirety (*e.g.*, Trumbull County Sheriff's Office, Trumbull County Court of Common Pleas, Trumbull County Mental Health & Recovery Board).<sup>2</sup> It then applies to each department's total expenditures an "estimated percentage" purporting to reflect the degree to which the department's expenditures are "impacted by the opioid epidemic." Counsel's letter does not explain what counsel means by "impacted by

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<sup>1</sup> The letter was emailed to the Court and Pharmacy Defendants on February 1, 2022.

<sup>2</sup> Counsel's letter does not cite, much less enclose, any material to support any of these figures.

the opioid epidemic.” Nor does it disclose the methodology counsel used to compute the percentage of each department’s expenditures that supposedly were “impacted by the opioid epidemic.” Nor does it identify—much less provide—the material it used to determine this percentage. In other words, plaintiffs have not just ignored the express terms of the Order by refusing to provide the discovery the Court ordered them to produce, the different information they provide is unexplained and unsupported and comes only in the form of uncorroborated statements of counsel. As far as Pharmacy Defendants can tell, the information may have been drawn from whole cloth.<sup>3</sup>

The Court should compel plaintiffs to comply immediately with the Order and provide, as the Court told them to, “discovery showing how much money Lake County and Trumbull County each expended on” “each element listed in their abatement plan” for “the two most recent years for which such data is available.” The Court should further order that, if plaintiffs continue to withhold their actual past costs for the services sought in their purported abatement plan, they will be precluded from presenting evidence at trial of what they contend are the future costs.<sup>4</sup>

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<sup>3</sup> Defendants’ initial review calls into question the reliability of counsel’s estimates. For example, while counsel’s letter states that 75% of the expenditures of the Lake County ADAMHS Board are related to opioids, a Board report admitted at trial indicates that the drug-of-choice of more than 55% of the persons for whom the Board funded treatment in 2019 was a non-opioid drug. *See CVS-MDL-04963 at ADAMHS000004913.*

<sup>4</sup> We note that plaintiffs’ purported abatement plan is insufficient in itself. It merely is a menu of options provided by an expert witness, who testified that it is for the counties themselves to tailor them. We have advised Special Master Cohen and plaintiffs that we will brief this issue in our March 9 submission.

February 4, 2022

Respectfully submitted,

/s/ Eric R. Delinsky

Eric R. Delinsky  
Alexandra W. Miller  
Graeme W. Bush  
Paul B. Hynes, Jr.  
ZUCKERMAN SPAEDER LLP  
1800 M Street NW, Suite 1000  
Washington, DC 20036  
Tel: (202) 778-1800  
E-mail: edelinsky@zuckerman.com  
E-mail: smiller@zuckerman.com  
E-mail: gbush@zuckerman.com  
E-mail: phynes@zuckerman.com

*Counsel for CVS Pharmacy, Inc., Ohio  
CVS Stores, L.L.C., CVS TN Distribution,  
L.L.C., CVS Rx Services, Inc., and CVS  
Indiana, L.L.C.*

/s/ John M. Majoras

John M. Majoras  
JONES DAY  
51 Louisiana Ave., N.W.  
Washington, D.C. 20001-2113  
Phone: (202) 879-3939  
Fax: (202) 626-1700  
Email: jmmajoras@jonesday.com

Tina M. Tabacchi  
Tara A. Fumerton  
JONES DAY  
77 West Wacker  
Chicago, IL 60601  
Phone: (312) 269-4335  
Fax: (312) 782-8585  
E-mail: tmtabacchi@jonesday.com  
E-mail: tfumerton@jonesday.com

*Attorneys for Walmart Inc.*

/s/ Kaspar J. Stoffelmayr

Kaspar J. Stoffelmayr  
Brian C. Swanson  
Katherine M. Swift  
BARTLIT BECK LLP  
54 West Hubbard Street  
Chicago, IL 60654  
Tel: (312) 494-4400  
Fax: (312) 494-4440  
kaspar.stoffelmayr@bartlitbeck.com  
brian.swanson@bartlitbeck.com  
kate.swift@bartlitbeck.com

Alex J. Harris

BARTLIT BECK LLP  
1801 Wewatta Street, 12th Floor  
Denver, CO 80202  
Tel: (303) 592-3100  
Fax: (303) 592-3140  
alex.harris@bartlitbeck.com

*Counsel for Walgreens Boots Alliance, Inc.;  
Walgreen Co., and Walgreen Eastern Co., Inc.*